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LITIGATION ASSISTANT
Patricia V. Gehler

April 27, 2011

Ms. Diana Lopez
Senior Editor – Sunshine Review

RE: Public Records Request

Dear Ms. Lopez:

I have received a copy of your April 14, 2011 email in which you made the following request for copies of public records:

- 1) Records* of **all salaries more than \$150k** from January 1, 2008 to January 1, 2011.
- 2) Records of salaries from January 1, 2008 to January 1, 2011 for:
 - Mayor
 - City council members
 - City manager
- 3) Benefits information for items 1 and 2, from January 1, 2008 to present day or most recently available records, if applicable.
- 4) Overtime hours for retiring personnel from January 1, 2008 to January 1, 2011.
- 5) City cell phone use from January 1, 2008 to January 1, 2011.
- 6) City personal car use from January 1, 2008 to January 1, 2011.

You implicitly placed a ten dollar (\$10.00) limitation on the charges for this request by asking that we provide you with a receipt of reproduction and location charges if the costs exceed that amount.

You have been provided with all relevant records as to requests numbered 1, 2, 3 and 5 above. Pat Skaleski provided you with these records in an email dated April 22, 2011. However, with regards to request number 3 it may also be helpful for you to review our

personnel ordinances which are set out in Subchapter 3C of the Madison General Ordinances (§§3.50-3.54, MGO). These ordinances may be reviewed online and accessed through the City's website at www.cityofmadison.com. You may also find it helpful to review the City's Personnel Manual and other related documents at www.cityofmadison.com/HR/.

Ms. Skaleski asked that you provide clarification of the records you were seeking regarding requests numbers 4 and 6. The following resources may assist you in clarifying those remaining requests.

With regards to request number 4, the ambiguity arises as to whether you are requesting information for the overtime hours worked during the specified time period or simply the total number of career overtime hours for employees who retired during the specified time period. Since there has been considerable public interest in the affect hat overtime earnings during the final three years of an employee's service have on their retirement pay, the City is interpreting your request as one for any overtime pay earned during an employee's final three years of service for employees who retired during your specified time period of January 1, 2008 to January 1, 2011.

However, the City does not maintain a record showing the amounts that retiring employees accumulated in overtime during any fiscal or calendar year. The City would have to develop that information by first identifying the employees who retired during the calendar years 2008, 2009, 2010. Then the City would have to review each such individual's pay records, extract the requested information and assemble that information into a record. However, a records custodian is under no obligation to create a record in order to satisfy a requestor's query. See Wis. Stats. § 19.35(1)(L).

However, we may be willing to undertake this effort if you agree to reimburse the City for the costs associated in creating this record. Staff has estimated that it would take approximately two hours worth of programming time to create the document you seek. Thus, the labor and programming costs of producing this information would exceed \$120. Consistent with the Public Records Laws, under which we require prepayment of any expenses in excess of five dollars (\$5.00) we would require you to pre-post the costs of creating this record before we would engage in such an effort. If you are interested in proceeding with this approach, please feel free to contact me.

Concerning request number 6, we cannot determine which records you are seeking access to. Your request is so broadly stated as to encompass our employee's use of their personally owned vehicles. We doubt that this is what you are looking for. Instead, we believe your request is related to city owned vehicles that are assigned to specific employees as either a requirement of their job or as a benefit associated with their position. However, that interpretation does not resolve the ambiguities of your request. For we do not know what you intend to be encompassed in the term "costs". Do you mean the maintenance costs? The operating costs? The purchase cost of the vehicles? The net cost of the vehicles after surplus sales? The cost to the employees of having an assigned car? At this point, your request is unduly vague and would be overly burdensome to process. Your request would encompass literally every document

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associated with each vehicle in the City's fleet. Processing your request would encompass untold hours of personnel time and resources and would be simply inconsistent with the good conduct of government business.

Furthermore, the public records laws allow us to recoup, on the public's behalf, the direct costs of locating any record and reproducing those records. Pursuant to sec. 19.35(3), Wis. Stats., you must prepay the costs of locating records if those costs exceed \$50.00 and must prepay the costs of reproducing records where those costs exceed \$5.00. We will not even begin the process of locating records until a records requestor posts such amounts. Your records request, as currently stated, would be very expensive to process and may result in production of records that may be of limited or no value to you.

Therefore, I have enclosed two documents for your review and direct your attention to our CARS policy (APM 2-13) which is available at <http://www.cityofmadison.com/mayor/apm/>. Hopefully, these documents will address your interests and concerns.

In arriving at the above determinations, the City has reviewed the requested information and carefully balanced the public interests in nondisclosure of these records against the strong presumption that public records should be open to inspection. The City has denied access to these records only when it is clear that public policies promoted by non-disclosure strongly outweigh the public's interests in full disclosure. In closing you are advised that, pursuant to Sec. 19.35 (4)(b) Wis. Stats., this determination not to disclose certain portions of these records is subject to review by Mandamus under Sec. 19.37 Wis. Stats., or upon application to the Wisconsin Attorney General or Dane County District Attorney.

Sincerely,



Roger A. Allen
Assistant City Attorney

Encl.



Diana Lopez <diana.lopez.liberty@gmail.com>

Madison City records request

Skaleski, Pat <PSkaleski@cityofmadison.com>

Tue, Jun 14, 2011 at 1:10 PM

To: Diana Lopez <dlopez@sunshinereview.org>, "Allen, Roger" <RAllen@cityofmadison.com>

You may send the check to my attention at:

City of Madison Payroll

210 Martin Luther King Blvd Room 406

Madison WI 53703-3345

Please make it payable to the City of Madison Treasurer.

From: diana.lopez.liberty@gmail.com [mailto:diana.lopez.liberty@gmail.com] **On Behalf Of** Diana Lopez

Sent: Tuesday, June 14, 2011 12:34 PM

To: Skaleski, Pat; Allen, Roger

Subject: Madison City records request

[Quoted text hidden]
